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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
Wireless Ventures, Inc.) WT Docket No. 97-82
Emergency Request for Waiver of Automatic) PCS C Block Licenses for
License Cancellation Provisions of Section) Markets 21, 164, 352 & 373
1.2110(f) of the Commission's Rules)
To: The Commission

APPLICATION FOR REVIEW

Wireless Ventures, Inc. ("WVI"), pursuant to §1.115 of the Commission's Rules, hereby requests review of the *Order* released by the Wireless Telecommunications Bureau ("Bureau") October 29, 1998 in the above-captioned proceeding. Therein the Bureau denied WVI's October 27, 1998 Emergency Request for Waiver of the automatic license cancellation provisions of § 1.2110(f) of the Commission's Rules for WVI's C-block PCS licenses for BTA Markets 21 (Ashtabula, OH), 164 (Glen Falls, NY), 352 (Plattsburgh, NY), and 373 (Richmond, IN). For the reasons discussed below, the Bureau erred.

Pursuant to §§ 1.115(b)(3) and 1.115(b)(4) of the Commission's Rules, WVI seeks relief as follows: The Commission should grant WVI's request for a temporary waiver of §1.2110(f) and allow WVI to resume installment payments for its PCS licenses. Pursuant to §1.115(b)(2), WVI states that Commission review is warranted because the action taken by the Bureau is in conflict with established Commission policy; alternatively, because this action involves a question of law or policy which has not previously been resolved by the Commission.

I. BACKGROUND

Pursuant to §1.2110(f), WVI availed itself of the 90-day automatic grace period for installment payments that had become due on July 31, 1998 for its PCS C Block licenses in BTA Markets 21, 164, 352 and 373. During this time, WVI worked to finalize the funding necessary to pay the installment payments and 5% late fee by the end of this grace period. When it became apparent that it would not be able to make full payment by October 29, 1998, the end of the 90-day grace period, WVI filed a request for waiver of the automatic license cancellation provision of §1.2110(f) on October 27, 1998. In its request, WVI requested a temporary waiver of §1.2110(f) for a time period of either 45 days or whatever time period the Commission would decide to provide the other C block licensees that were also seeking waivers. WVI also agreed to pay all accrued interest as well as a ten percent (10%) late payment fee (*i.e.*, both the 5% fee that WVI owed for having availed itself of the automatic 90 day grace period, and another 5% late fee). On October 29, 1998, the Bureau released the *Order* denying WVI's waiver request.

II. QUESTIONS PRESENTED FOR REVIEW

Pursuant to §1.115(b)(1) of the Commission's Rules, WVI requests that the Commission address the following questions:

- 1) Whether the Bureau erred by holding that denial of WVI's request for waiver would not frustrate the underlying purposes of §1.2110(f).
- 2) Whether the Bureau erred in holding that the public interest would not be harmed by the denial of WVI's request for waiver.

III. DISCUSSION

A. The Bureau erred in holding that the public interest would not be harmed by the denial of WVI's request for waiver.

1. Granting the Waiver Request Would Speed Service.

The Bureau erroneously decided that the public interest would not be harmed by the denial of WVI's request for waiver. According to §309(j) of the Communications Act, one main objective behind the Commission's use of competitive bidding is the "rapid deployment of new technologies, products and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays." By denying WVI's waiver request and canceling its licenses, the Bureau has effectively delayed the deployment of PCS systems in four BTAs. It is WVI's understanding that there is currently no 1900 MHz PSs service offered at all yet in Markets 164 and 352 (Glen Falls and Plattsburgh, NY) and only partial coverage in the other two markets. By not granting WVI a very short delay necessary to avoid license cancellation, the Commission will force these rural communities to wait well into the indefinite future for a new digital wireless competitor to enter their markets. If WVI were allowed to keep its licenses and resume making installment payments, it would be able to commence service in these four rural markets much more quickly than a new licensee from a subsequent reauction of these licenses ever could.

2. Granting the Waiver Would Increase Revenues to the Treasury

The cancellation of WVI's licenses will also deprive the US Treasury of funds that will be impossible for the Commission to recover. If the Commission decided to grant WVI a temporary waiver to pay its installment payments and late fees, the Commission would have chosen an option that would bring in the most revenue, because at this time, WVI will pay more than anyone else. Due to the unusual circumstances that surrounded the C block auction, WVI, like other C-block

licensees, bid more for its licenses than they are worth. Upon reauction, bidders will not bid nearly as much money for these licenses, especially in light of the changes that have occurred in the market since the first auction. Even WVI would not be willing to pay its original bid price for its licenses but for two factors: (i) WVI would not be eligible to bid in a reauction; and (ii) default likely would render WVI unable to participate in any further FCC spectrum auctions. In its *Fourth Report and Order*, FCC 98-176, released August 19, 1998, at ¶18, the Commission specifically prohibited those who had defaulted on other Commission licenses from participating in the upcoming C- and F-block reauction, and the reasoning used therein would preclude a defaulter from ever participating in any future auction. WVI would pay the premium (*i.e.*, the excess of its original bid price over market value) to avoid the “defaulter” label.

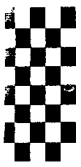
Conversely, if this waiver request is denied, WVI has no incentive to make any default payment, and no way to raise funds to cover a default payment. (WVI’s prospective funding source would fund to pay for licensing and construction costs, but not for a canceled license.) Even if WVI is theoretically liable for the “shortfall” plus a three percent penalty under Section 1.2104(g), WVI would have no money to pay, and the Treasury would never collect this liability.

Thus, by granting the temporary waiver, the Commission would receive the most possible money for the four licenses in question at the earliest possible date, and avoid the expenses and administrative hassles that would result from a reauction.

B. The Bureau erred by holding that denial of WVI's request for waiver would not frustrate the underlying purposes of §1.2110(f).

The Bureau erroneously concluded that denial of WVI's request for waiver would not frustrate the underlying purposes of §1.2110(f). Section 1.2110(f) states that if a PCS C-block licensee does not make its installment payment within 90 days of the due date, its license will be canceled and the licensee will be declared to be in default. When the Commission amended this rule section to add one 90-day grace period for PCS C and F block licensees, it did so partially to set a time limit on grace periods, but also in order to assist PCS C-block licensees having last-minute delays in raising capital by giving them additional time to complete their fund-raising efforts. 63 Fed. Reg. 17111 (1998).

This underlying purpose was not served by the denial of WVI's waiver request. The granting of WVI's waiver request would have given WVI the time necessary to complete its fundraising to make the entire installment payment and all late fees. Canceling WVI's licenses and declaring WVI to be in default when a short extension of time would have made payment possible is not consistent with the Commission's expressed desire to assist C-block licensees with last minute fund-raising. Moreover, because WVI's waiver request contemplates WVI paying an additional 5% penalty, granting WVI a waiver here would not undermine the Commission's efforts to encourage other installment payment licensees to pay their own installments.



IV. CONCLUSION

The Commission erred by holding that denial of WVI's waiver request would not harm the public interest. The cancellation of WVI's license will deny the communities covered by BTA Markets 21, 164, 352 and 373 the free market choice that the deployment of a new digital PCS system would provide for an indefinite period of time. License cancellation will also permanently deprive the Treasury of much-needed revenues, because only WVI has the incentive to pay as much as WVI originally bid. The Commission also erred in holding that WVI's waiver request would not frustrate the underlying purposes of §1.2110(f). Strict enforcement of the automatic license cancellation provision under §1.2110(f) leads to an outcome that is contrary to the Commission's purpose in creating such a rule.

WHEREFORE, in consideration of the foregoing, WVI respectfully requests that the Commission reverse the Bureau's *Order*, and afford WVI 45 days (from the release date of the Commission's decision) within which to make its installment payments plus penalties, as WVI requested in its waiver request.

Respectfully submitted,

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